S.B. CIVIL WRIT PETITION NO. 2032/1995.

(RSRTC vs. NARENDRA SINGH & OTHERS)

DATE OF ORDER : 28.03.2007.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Sangeet Lodha for the petitioner.

By this petition for writ, a challenge is given to the award dated 12.09.1994 passed by Labour Court, Jodhpur in Industrial Dispute Case No.78/90.

The factual matrix necessary for adjudication of this petition for writ is that the appropriate government referred an industrial dispute to Labour Court, Jodhpur for its adjudication in following terms:

> "क्या श्रमिक श्री नरेन्द्रसिंह राठौड़ परिचालक जिसका कि प्रतिनिधित्व श्री विजय मेहता कार्यकारिणी सदस्य राज. स्टेट रोड़वेज एम्पलाईज यूनियन (एटक) सोजती गेट, जोधपुर ने किया की उसके नियोजक सम्भाग प्रबन्धक राज. राज्य पथ परिवहन निगम, जोधपुर द्वारा श्रमिक के निलंबनकाल के शेष वेतन को जप्त करना, दो वार्षिक वेतन वृद्धियाँ स्थायी रूप से रोकने एवं सेवाभिलेख में चेतावनी अंकित करने का दण्ड देना उचित एवं वैध है। यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है?"

In the statement of claim, the workman came forward with a case that the penalty of stoppage of two annual grade increments and forfeiture of the wages for the period of

suspension was imposed upon him in violation of principles of natural justice, as the disciplinary authority without providing reasons for disagreement with the findings given by the enquiring authority, imposed the penalty impugned. The stand of the employer before Labour Court was that the Enquiry Officer is not competent to exonerate the employee for the allegation of misconduct as it is within the sole domain of the disciplinary authority.

The Labour Court after examining the entire evidence available on record that consists of charge sheet, statement of witnesses recorded during the disciplinary proceedings and the report of Enquiry Officer, held that once the delinquent employee was not found guilty for a charge of the misconduct under the enquiry conducted, then on disagreement of such findings, the disciplinary authority should have called upon the workman to submit his explanation to meet the reasons of disagreement and to maintain the findings given by Enquiry Officer. For the purpose, a notice with reasons for disagreement with the findings of Enquiry Officer was required to be given and in the instant matter, no such notice alongwith a copy of enquiry report was given. The Labour Court on this count declared the order passed by the disciplinary authority illegal and, therefore, set aside the same.

While giving challenge to the award impugned, the contention of counsel for the petitioner is that the respondent workman was found involved in a misconduct i.e. carrying of ticketless travellers, therefore, the Labour Court erroneously interfered with the matter. It is also stated that once the Labour Court found the entire enquiry fair, then there was no occasion to interfere with the order passed by the disciplinary authority.

I do not find any force in the contentions so raised as admittedly the respondent workman was not found guilty for the misconduct alleged and the disciplinary authority by disagreeing with the findings given by the Enquiring authority, imposed the penalty, but before doing so, no notice containing reasons for disagreement was given. This Court in the case of Dr. Safdar Hussain vs. State of Rajasthan and others (S.B. Civil Writ Petition No.4490/93) decided on 02.08.2005 held as under:-

> "The disciplinary authority while disagreeing with the inquiry officer on article of charge before recording his own finding did not choose to supply tentative reasons for such a disagreement at the time of supply of inquiry report or at any time before imposition of penalty of removal. It is well settled that wherever a delinquent

> employee succeeds before the inquiry officer to establish his innocence and the disciplinary authority defers with the findings given by the inquiry officer and imposes punishment then the disciplinary authority is required to provide tentative reasons for such disagreement to the delinquent employee. If no such reasons are provided to the delinquent employee by the disciplinary authority then the same shall certainly cause a prejudice to him as he shall not be in a position to place his version to defend himself with regard to the view taken by disciplinary authority."

The violation of principles of natural justice in the instant matter, therefore, is apparent.

It is true that the respondent workman did not challenge the fairness of the enquiry, but it does not preclude him from challenging the order of the disciplinary authority. The workman did not choose to assail fairness of the enquiry as he was having no grievance with the procedure adopted by the Enquiry Officer while holding enquiry, wherein he was not found guilty for the charges alleged. He was having grievance with the order of the disciplinary authority being in violation of the principles of natural justice on the count that no reasons for disagreement with the findings given by the Enquiry Officer was given to him.

In view of whatever discussed above, I do not find any error in the award impugned that may warrant interference of this Court under Article 226 and 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR)J.

Anil/